

§ 1100.27

28 CFR Ch. XI (7–1–05 Edition)

2000 (TVTPA), Public Law 106–386, 114 Stat. 1464.

INA means the Immigration and Nationality Act, 8 U.S.C. 1101 et seq.

Involuntary servitude includes a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of the legal process (22 U.S.C. 7102).

Responsible official refers to the agency official designated to provide the services described in 42 U.S.C. 10607(a).

Section 107(c) means section 107(c) of TVPA, Division A of Public Law 106–386.

Services to victims refer to those services to be provided pursuant to 42 U.S.C. 10607(c), unless otherwise specified in the TVPA or this subpart.

Severe forms of trafficking in persons means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery (22 U.S.C. 7102).

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act (22 U.S.C. 7102).

TVPA means the Trafficking Victims Protection Act of 2000, Public Law 106–386, Division A, October 28, 2000, 114 Stat. 1464, as amended, 22 U.S.C. 7105, et seq.

United States means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States (22 U.S.C. 7102).

Victims' rights refer to crime victims' rights under 42 U.S.C. 10606(b), as well as in other federal victims' rights legislation.

§ 1100.27 Purpose and scope.

(a) Under section 107(c) of the TVPA, both the Department of Justice (DOJ) and the Department of State (DOS) have been directed to promulgate regulations to implement the following:

(1) Procedures for appropriate federal employees to ensure, to the extent practicable, that victims of severe forms of trafficking in persons are housed in a manner appropriate to their status as crime victims, afforded proper medical care and other assistance, and protected while in federal custody, in accordance with their status as victims of severe forms of trafficking in persons;

(2) Procedures to provide victims of severe forms of trafficking in persons with access to information about their rights and with translation services;

(3) Procedures for federal law enforcement officials to request that certain victims of severe forms of trafficking in persons, who are aliens and are also potential witnesses, be permitted to remain in the United States to effectuate the prosecution of those responsible, and procedures to protect their safety, including taking measures to protect victims of severe forms of trafficking in persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates (these procedures should be appropriate to their status as victims of severe forms of trafficking in persons); and

(4) Training of appropriate DOJ and DOS personnel in identifying victims of severe forms of trafficking in persons, in understanding the particular needs common to victims of severe forms of trafficking in persons, and in providing for the protection of such victims.

(b) The regulations in this subpart apply to all federal law enforcement personnel, immigration officials and DOS officials, insofar as their duties involve investigating or prosecuting traffickers in persons, or may involve identifying, encountering or detaining victims of severe forms of trafficking in persons.

(c) The rights and protections made available to victims of severe forms of trafficking in persons under section

107(c) supplement those rights and protections provided to victims and witnesses in federal victims' rights legislation as defined in this subpart. The intent of this subpart is to ensure that the protections available under the provisions of federal victims' rights legislation as well as the TVPA are fully provided to victims of severe forms of trafficking in persons, in keeping with their status as victims of severe forms of trafficking in persons. This subpart will ensure that these victims are identified as early as possible in the investigation and prosecution process, so that services and protections available to them under the laws of the United States are provided.

(d) The regulations under this subpart set forth the general procedures to ensure these rights are protected in cases involving victims of severe forms of trafficking in persons. All agencies, bureaus, boards, divisions, programs, and offices in the DOJ and the DOS with specific responsibilities under this subpart shall adopt such regulations and/or operating procedures as may be necessary to ensure compliance with section 107(c) and the requirements of this subpart.

§ 1100.29 The roles and responsibilities of federal law enforcement, immigration, and Department of State officials under the Trafficking Victims Protection Act (TVPA).

(a) *Department of Justice officials.* The various agencies, bureaus, boards, divisions, programs, and offices of the DOJ have most of the responsibilities assigned by section 107(c). The goals of section 107(c) are to identify victims of severe forms of trafficking in persons as early as possible in the investigation and prosecution process, to ensure efforts are made to see that such victims are accorded the rights described in 42 U.S.C. 10606, and to provide the protections and services required under 42 U.S.C. 10607 and under the TVPA.

(b) *Department of State officials.* Department of State missions throughout the world are often the initial contact for aliens in foreign countries who wish to come to the United States. Appropriate DOS personnel should be trained in identifying victims of severe forms of trafficking in persons. Furthermore, considering the international nature of

trafficking in persons, appropriate DOS personnel, upon encountering victims of severe forms of trafficking in persons in foreign countries, should consider referrals to local law enforcement or service providers in the host country, but only if the local host country conditions support such actions.

(c) *Federal law enforcement officials.* Federal law enforcement officials who, during the performance of their duties, encounter a person whom they believe may be a victim of a severe form of trafficking in persons as defined by this subpart, are responsible for bringing such an individual to the attention of those federal law enforcement officials primarily responsible for enforcing trafficking laws, specifically INS or FBI. In addition, DOS's Diplomatic Security Service has investigative authority in visa and passport fraud cases that may involve trafficking in persons. Federal law enforcement officials also include federal law enforcement personnel working cooperatively with law enforcement officials who have primary investigative jurisdiction in such trafficking cases. Each federal agency having law enforcement responsibilities should ensure that its officers are trained in identifying victims of severe forms of trafficking in persons, and are familiar with the rights, services, and protections such victims are to be accorded under the TVPA and 42 U.S.C. 10606 and 10607.

§ 1100.31 Procedures for protecting and providing services to victims of severe forms of trafficking in persons in federal custody.

(a) While in federal custody, all victims of severe forms of trafficking in persons must be provided, to the extent practicable, the protections and services outlined in this section in accordance with their status as victims of severe forms of trafficking in persons. Under 42 U.S.C. 10607(a), each agency must designate officials who are responsible for identifying victims of crime and providing services to them. The designations appear in the *Attorney General Guidelines*. This responsibility also extends to those who are responsible for victims of severe forms of trafficking in persons while they are in federal custody.